No. 85-1517

IN THE

Supreme Court of the United States

October Term, 1985

THE PEOPLE OF THE STATE OF COLORADO,
Petitioner,
v.
JOHN LEROY SPRING,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

BRIEF OF THE STATE OF INDIANA AND THE COMMONWEALTHS AND STATES OF GUAM, ILLINOIS, IOWA, LOUISIANA, MARYLAND, MISSISSIPPI, MISSOURI, MONTANA, NEVADA, NEW HAMPSHIRE, NORTH CAROLINA, OKLAHOMA, VERMONT, AND WYOMING

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INTEREST OF AMICI CURIAE

Twenty years ago in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966), the Supreme Court ruled that the fruits of custodial interrogation had to be suppressed at

trial unless a defendant had been warned of his rights to silence and to counsel prior to interrogation. Throughout the years, the "prophylactic rules"[1] of *Miranda* have worked well. Indeed, the increased professionalism of police that has resulted from the decision has benefited both the police and prosecutors in preparing cases. Moreover, since *Miranda*, there are few claims of coerced confession in trials where the "coercion" involves police practices more abusive than violations of the *Miranda* rule itself. Due to the rigid, nontechnical guidelines set forth in *Miranda*, the range of police behavior has narrowed. *Miranda* has aided in the continuing pursuit of a lawful and just society.

Despite the clarity of *Miranda*, the Supreme Court of Colorado appends to the decision an additional requirement: an individual must be informed of the charges about which he is to be questioned prior to waiving his rights. The Supreme Court of Colorado has also imposed a duty of inquiry[2] on interrogating officers when a suspect, who has waived his rights and agreed to interrogation, refuses to answer a specific question. The amici curiae assert that the rulings of the Supreme Court of Colorado unnecessarily lessen the desired clarity of *Miranda* and serve to exclude reliable evidence in cases where a suspect's procedural or substantive rights have not been violated.

STATEMENT OF THE CASE

The Respondent, John Leroy Spring, was charged with the first degree murder of Donald Walker. At trial,

[1] *Michigan v. Tucker*, 417 U.S. 433, 444, 94 S.Ct. 2357, 2363-2364 (1974).

[2] The Supreme Court of Colorado ruled that once a suspect has indicated that he does not wish to answer a question or questions, interrogating officers have a duty to determine whether he is exercising his privilege against self-incrimination or is merely reluctant to answer particular questions.

evidence established that Walker was shot to death during an elk hunt, in February 1979, while in the company of the Respondent and Donald Wagner. At the site of the hunt, Walker was asked to walk ahead and to search a ravine for elk. Wagner asked the Respondent to shine a flashlight in the direction of Walker. Subsequently, Wagner not only fired a rifle shot that hit Walker in the head, but also approached him and fired a second shot which resulted in Walker's death.

The Respondent later informed George Dennison, an informant working with agents of the Federal Bureau of Alcohol, Tobacco, and Firearms (hereinafter, ATF) of the murder. Dennison related details of the murder, as well as, information regarding illegal firearm transactions to ATF agents. On March 30, 1979, the Respondent was arrested due to federal firearm charges. The Respondent, twice advised of his *Miranda* rights, signed a waiver of rights form. The Respondent was not informed of the subject matter of the impending interrogation. At the conclusion of the interrogation concerning firearm violations, the Respondent was questioned about the murder. The Respondent denied presence in Colorado and involvement in the murder.

Soon after, the Respondent was charged with murder and entered a plea of guilty to a federal firearms violation. On July 13, 1979, ATF agents visited the Respondent, incarcerated in a Kansas City jail. After being advised of his *Miranda* rights and told that he had the right to cease questions at any time, the Respondent acknowledged that he understood his rights, but refused to sign a waiver of rights form without first consulting an attorney. As the agents prepared to leave, the Respondent decided to talk with them.

Thereafter, a discussion commenced regarding firearms and explosives, the Respondent's activities in Colorado, the Colorado murder, and other crimes of which the Respondent was a suspect. The Respondent was again

advised of the option to cease questions. When the Respondent declined to talk about the Walker murder, the agents changed the subject matter of the questions. The Respondent, however, told the agents that a .22 caliber gun that he possessed at the time of his arrest had been removed from Walker at his death. The Respondent was later convicted of first degree murder, sentenced to life imprisonment, and later appealed his conviction.

The Court of Appeals of Colorado reversed the Respondent's conviction on the basis that the March 30, 1979 and July 13, 1979 statements were taken in violation of the Respondent's constitutional rights and that the State had failed to establish that a statement given on May 26, 1979 was not the fruit of the March 30 statement. Because the Respondent was not informed, prior to the March 30 and July 13 interviews of the subject matter of the interrogations, his waivers were not knowingly and intelligently given. The Court of Appeals also ruled that the agents, on July 13, improperly continued to question the Respondent about the murder after he informed them that he did not want to talk about the subject.

The Supreme Court of Colorado affirmed the decision of the Court of Appeals by ruling that the State failed to prove that the Respondent made a knowing, intelligent, and voluntary waiver of rights since he was not informed of the subject matter of the interrogations prior to the interviews. The Supreme Court also ruled the July 13 statement inadmissible because "[o]nce the defendant has indicated in any way that he does not want to answer a question or questions, the interrogating officers have an affirmative and emphatic duty to determine whether the suspect is in fact exercising his privilege against self-incrimination in all respects, or is merely reluctant to answer particular questions."

ARGUMENT

A.

In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966), the Supreme Court set forth a "bright line" test of admissibility which focused on the application of the Fifth Amendment privilege against self-incrimination to in-custody interrogation: "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id.* at 444, 86 S.Ct. at 1612. The Supreme Court directed police to provide "procedural safeguards" when the suspect was in custody and prior to interrogation. The procedures required that "[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* at 444, 86 S.Ct. at 1612.[3] The Court determined that a confession obtained during custodial interrogation and in the absence of *Miranda* warnings conclusively would be presumed the result of police coercion. Because such a confession was presumed involuntary, it was inadmissible.

In order to provide "concrete constitutional guidelines for law enforcement agencies and courts to follow,"[4] the case-by-case examination of police interrogation methods was replaced by a concise requirement that the prescribed warnings be given. As the *Miranda* Court stated, "[a]ssessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than

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[3] The Court also stated that "[t]he defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly, and intelligently." *Id.*

[4] *Id.* at 442, 86 S.Ct. at 1611.

speculation; a warning is a clear-cut fact." *Id.* at 468-469, 86 S.Ct. at 1624-1625.

It is clear that *Miranda* does not explicitly require that a person in custody be informed of the charges which the police are investigating. The language in *Miranda* is painstakingly specific regarding the basic constitutional rights which the police must advise a suspect prior to questioning. *Id.* at 467-479, 86 S.Ct. at 1624-1630, *Carter v. Garrison*, 656 F.2d 68, 70 (4th Cir. 1981)(per curiam) *cert. denied*, 455 U.S. 952, 102 S.Ct. 1458 (1982), *United States v. Burger*, 728 F.2d 140 (2nd Cir. 1984). Indeed, there is no indication in *Miranda* that there must be a warning given to a suspect concerning the nature of the crime which led to the interrogation conference, the possible penalty, the elements of the offense, and other similar matters. *Miranda* requires that an accused be advised of his rights so that he may make a rational decision; not necessarily the best decision or one that would be reached only after long and arduous deliberation.

Moreover, in *Moran v. Burbine*, No. 84-1485 (U.S. March 10, 1986), a suspect was not informed that an attorney, retained by his relatives, was available to him. The Court ruled that *Miranda* did not mandate the authorities to so inform the suspect:

> No doubt, the additional information would have been useful to the respondent; perhaps even it might have affected his decision to confess. But we have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights.

Accord, Oregon v. Elstad, ___ U.S. ___, ___, 105 S.Ct. 1285, 1297 (1985). Further, the Court in *Berkemer v. McCarty*, ___ U.S. ___, 104 S.Ct. 3138 (1984), indicated that the police need not inform a suspect, prior to questioning, what the precise nature of the charges may be. The Court refused to accord the *Miranda* procedural

safeguards based upon a felony misdemeanor distinction since police are often unaware at the time of the arrest whether the arrestee committed a misdemeanor or a felony. It would, therefore, be unreasonable to require police to determine the nature of the offense as a condition precedent to proper police procedure. *Id.*, 104 S.Ct. at 3146. Also, as noted in *Collins v. Brierly*, 492 F.2d 735, 739 (3d Cir. 1974) *cert. denied*, 419 U.S. 877, 95 S.Ct. 1401 (1974), the waiver of *Miranda* rights does not compel a suspect to answer questions. When questioning progresses to an area of illegal conduct, the person being interrogated may refuse to answer.

Finally, the amici curiae submit that the rule imposed by the Supreme Court of Colorado would severely impair the efforts of law enforcement officers who often do not know what laws have been violated until an investigation is complete. As written, *Miranda* strikes the proper balance between society's legitimate law enforcement interests and the protection of a defendant's Fifth Amendment rights.

B.

The waiver of *Miranda* rights by a person being interrogated is not irrevocable. *Miranda* and its progeny allow an interrogee to withdraw his waiver and fully assert his Fifth Amendment rights in the midst of the interrogation process. In *Miranda*, the Supreme Court stated:

> Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point, he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning,

> the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.

Miranda v. Arizona, 384 U.S. 436, 473-474, 86 S.Ct. 1602, 1627-1628. It is also settled that a suspect may selectively waive his Fifth Amendment rights by indicating that he will respond to some questions, but not to others. Under *Miranda*, once a person in custody indicates that he wishes to remain silent, the interrogation must cease. The Supreme Court, however, rejected this literal interpretation of *Miranda* by ruling that the exercise of the right to remain silent does not preclude all further questioning. *Michigan v. Mosley*, 423 U.S. 96, 96 S.Ct. 321 (1975). In *Mosley*, the Supreme Court refined its *Miranda* holding as follows:

> A reasonable and faithful interpretation of the *Miranda* opinion must rest on the intention of the Court in that case to adopt "fully effective means . . . to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored . . ." 384 U.S. at 479, 86 S.Ct. at 1630. The critical safeguard identified in the passage at issue is a person's "right to cut off questioning." *Id.* at 474, 86 S.Ct. at 1627. Through the exercise of his option to terminate questioning he can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation. The requirement that law enforcement authorities must respect a person's exercise of that option counteracts the coercive pressures of the custodial setting.

Mosley, 423 U.S. at 102, 96 S.Ct. at 326. In the instant case, the Supreme Court of Colorado ruled that interrogating officers have an affirmative duty to determine if a suspect is exercising his privilege against self-incrimination or is merely reluctant to answer particular questions when a suspect indicates that he does not wish to answer a question or questions. The amici curiae submit that this duty of clarification not only unduly restricts police, but also creates uncertainty.

The additional requirement which the Colorado Supreme Court has imposed on its state police officers is elusive, procedurally ineffective, and generates intolerable uncertainty. Under the Colorado requirement, police must carefully assess each word spoken by an interrogee in case that a later review of a record of proceedings may reveal words, arguably ambiguous, which possibly show a desire to remain silent. This requirement also necessitates a case-by-case review which involves a balancing of variables including the behavior of the police and the subjective attributes of the suspect.

Further, the Colorado rule unnecessarily blurs the *Miranda* requirements. Indeed, an interrogee's willingness to answer certain questions and refusal to speak when he does not so desire evidences an understanding of his rights and his ability to discern those areas in which he chooses to preserve his silence. The imposition of the Colorado requirement would risk the gains represented by *Miranda v. Arizona*.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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